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Courtesy Bus Company, Inc *and* Transit Workers Union of America, Local 252, AFL-CIO. Case No. 29-CA-29399

August 10, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On June 9, 2009, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board¹ has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Courtesy Bus Company, Inc., Oceanside, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. August 10, 2009

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Marcia E. Adams, Esq., for the General Counsel.

Richard Milman, Esq. (Miller Labuda Law Group PLLC), of
Lake Success, New York, for the Respondent.

John S. Groarke, Esq. (Colleran, O'Hara, & Mills, LLP), of Garden City, New York, for the Union.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge: This case was tried in Brooklyn, New York, on March 24, 2009. The Complaint alleges that Respondent, in violation of 8(a)(1) and (5) of the Act, refused to provide the Union with information about the hours worked by unit employees. Respondent denies that it has engaged in any violations of the Act and asserts that the requested information is not relevant to the Union's duties and that the request is unduly burdensome.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent on May 28, 2009, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a domestic corporation with an office at 107 Lawson Boulevard, Oceanside, NY, is engaged in providing school bus transportation. Annually Respondent derives gross annual revenues in excess of \$250,000 and purchases and receives goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and that Transit Workers Union of America, Local 252, AFL—CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Union is the exclusive collective-bargaining representative of Respondent's employees in the following appropriate

All authorized and allotted full-time and regular part-time bus drivers, van drivers, escorts, mechanics, mechanics' helpers and yard persons employed at Respondent's Staten Island facility, excluding all other employees employed at the Staten Island facility, including office clerical employees, shop foremen, guards and supervisors as defined by the National labor Relations Act.¹

The Respondent and the Union have been parties to successive collective-bargaining agreements, the most recent of which is effective from September 1, 2006 to August 31, 2010.

Article XX of the collective-bargaining agreement guarantees a certain number of hours to employees and provides for overtime pay. Article XXXV sets forth hourly wage rates and rates for overtime and for charter bus assignments.

On September 16, 2008 the President of Local 252 sent a letter to Respondent requesting detailed information on the hours worked and wages paid to all bus drivers for the period January 1, 2006 to date. By letter of November 12, 2008, Richard I.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

¹ The corporate office of Courtesy Bus is in Staten Island.

Milman, Esq., responding on behalf of the company, refused to provide the requested information. Milman's letter stated that "there is no pending grievance concerning any Local 252 TWU members . . . with respect to any wage and hour issues. . . . [Y]our information requests are not in furtherance of Union negotiations. . . . [T]he information and data requested . . . is extremely voluminous and burdensome upon the Employer to compile and produce. . . ."

On January 6, 2009, the Union sent another information request to Respondent. The Union's letter stated:

The purpose of this correspondence is to request information required by the Union to police and determine whether Courtesy Bus Company is properly paying wages pursuant to Article XX and article XXXV of the Collective Bargaining Agreement.

Pursuant to the national Labor Relations Act, in order to monitor and administer the collective bargaining agreement, the union requests the following information for the period January 1, 2008 to December 31, 2008:

- 1. Please provide the full name for each employee that has worked as a bus driver.
- 2. Please provide the total hours worked each workday and total hours worked each workweek for each bus driver in your employ.
- 3. Please provide the total daily and weekly straighttime hours worked during the work day or workweek for each bus driver in your employ.
- 4. Please provide the total daily and weekly overtime hours worked during the work day or workweek for each bus driver in your employ.
- 5. Please provide the total wages paid each pay period and the date of payment.

By letter of January 8, 2009 Milman stated that he would instruct his client to provide the names of employees pursuant to the request in paragraph 1 and the total wages paid pursuant to the request in paragraph 5. Milman stated that the information requested in paragraphs 2, 3, and 4 would not be provided because there was "no underlying grievance and or upcoming union negotiations."

Respondent called George Keller, the regional vice president of Courtesy Bus, to testify about the company's payroll procedures. Keller testified that Respondent employs 400 bus drivers who work during the regular school year and, in some instances, during the summer. In addition to their regular school routes, bus drivers also drive charter buses to athletic and other events. Keller testified that a bus driver's daily route assignment will show the guaranteed time and the actual time driving time for the route. The driver's daily trip card shows the hours driven every day on regular routes and a different document shows the charter routes driven by the driver. According to Keller, the daily route documents are stored separately from the documents that show when a driver has driven a charter route on a particular day. Keller testified that in order to compile the information requested by the Union from the original daily documents the company would have to obtain the documents from storage. Then the documents for each individual driver would have to be put in calendar order. There might be up to four documents daily per individual for a possible 200 work days for some bus drivers. In response to a leading question from Counsel for Respondent, Keller said there might be up to 300,000 documents to examine.

On cross-examination Keller testified that every week Courtesy Bus transmits the information on hours worked by each bus driver to the corporate office in Staten Island. Keller explained that every day each bus driver turns in a daily trip card to the dispatcher. The dispatcher marks the trip card to show hours worked on each type of assignment and submits the trip card to the payroll clerk.² The payroll clerk enters the total number of hours worked by each bus driver for the various types of assignments onto a computer spreadsheet that is submitted weekly to the corporate office. The payroll clerk submits both straight time hours and overtime hours on the spreadsheet for each day worked by a bus driver. The Staten Island corporate office maintains the information, calculates the wages due and cuts the checks for the bus drivers.

Keller stated that the information is kept by calendar year but he did not know how far back the information went. Keller does not know how many pages the spreadsheet comprises and he does not know the type of computer program used for the spreadsheet.

Keller testified that he had never asked the corporate office whether it could generate the information requested in paragraphs 2, 3 and 4 of the Union's request. Keller forwarded the request to Milman without considering whether to comply with the Union's request. He did not offer the Union the opportunity to review the original documents that would reveal the total straight time and overtime hours worked by the bus drivers.

III. DISCUSSION AND CONCLUSIONS

It is well-established that an employer must furnish to the collective-bargaining representative of its employees information that is necessary and relevant to the performance of the Union's duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Wage and hour information concerning bargaining unit employees is presumptively relevant and must be produced to the Union. *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), enf'd 347 F.2d 61 (3rd Cir. 1965). In this case, even though the Union was not required to do so, it informed Respondent that the requested information would assist it in determining whether the bus drivers were being paid according to the wage and overtime provisions of the current collective-bargaining agreement.

Respondent urges that production of the requested material would be unduly burdensome. Respondent acknowledges that the "onus is on the Respondent to show that production of the data would be unduly burdensome." *Tower Books*, 273 NLRB 671 (1984). Keller testified that producing and compiling the information requested from the original documents containing the raw data would be expensive and time-consuming. However, Keller also testified that the raw data are entered on a daily basis into a computer spreadsheet that records the regular time and overtime hours worked by each bus driver for each day. The information on the spreadsheet is used on a weekly basis by the Respondent's corporate office to calculate wages

² Courtesy Bus employs one payroll clerk.

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and prepare a pay check based on the straight time and overtime provisions of the collective-bargaining agreement. Keller testified that the corporate office maintains the data on a yearly basis. Thus the spreadsheet contains exactly the information requested by the Union, namely the total hours worked each work day and work week, and the daily and weekly straight time hours and the daily and weekly overtime hours for each bus driver employed by Courtesy Bus.

Keller did not testify that it would be onerous or time consuming or unduly burdensome to produce the information on the computer spread sheet. Keller did not know how many pages were contained on the spreadsheet. I find that the information requested by the Union is contained on the weekly spreadsheets described by Keller and said by him to be kept on a yearly basis. I conclude that Respondent has not met its burden to show that production of the data requested by the Union would be unduly burdensome. Thus, Respondent has unlawfully refused to provide the information requested by the Union

CONCLUSIONS OF LAW

1. Transit Workers Union of America, Local 252, AFL–CIO, is the exclusive collective bargaining representative of Respondent's employees in the following appropriate unit:

All authorized and allotted full-time and regular part-time bus drivers, van drivers, escorts, mechanics, mechanics' helpers and yard persons employed at Respondent's Staten Island facility, excluding all other employees employed at the Staten Island facility, including office clerical employees, shop foremen, guards and supervisors as defined by the National labor Relations Act.

2. By refusing to provide the Union with the necessary and relevant information it requested on January 6, 2009, Respondent violated Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Courtesy Bus Company, Inc., 107 Lawson Boulevard, Oceanside, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to provide the Union the necessary and relevant information it requested on January 6, 2009.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Provide the Union with the following information it requested for the period January 1, 2008 to December 31, 2008:

The total hours worked each workday and total hours worked each workweek for each bus driver in your employ.

The total daily and weekly straight-time hours worked during the work day or workweek for each bus driver in your employ.

The total daily and weekly overtime hours worked during the work day or workweek for each bus driver in your employ.

- (b) Within 14 days after service by the Region, post at its facility in Oceanside, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 6, 2009.
- (c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 9, 2009

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to provide necessary and relevant information to Transit Workers Union of America, Local 252, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the following information that it has requested: The total hours worked each workday and total hours worked each workweek for each bus driver. The total daily and weekly straight-time hours worked during the work day or workweek for each bus driver. The total daily and weekly overtime hours worked during the work day or workweek for each bus driver.

COURTESY BUS COMPANY, INC.